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December 13, 2024

The Honorable Katherine Polk Failla
United States District Court for the Southern District of New York
40 Foley Square, Room 618
New York, NY 10007

MEMO ENDORSED

Re: *Broadcast Music, Inc., v. Sirius XM Radio LLC*, No. 1:24-cv-06896 (S.D.N.Y.)

Dear Judge Failla:

We represent Respondent Sirius XM Radio LLC (“Sirius XM”) in the above-captioned action. We write pursuant to Rule 9(B)(i) of this Court’s Individual Rules of Practice in Civil Cases to respectfully request permission to file in redacted form the Response of Sirius XM to the Petition of Broadcast Music, Inc. (“BMI”) for a Determination of Reasonable Fees (the “Response”). This Letter Motion seeks to redact limited portions of the Response that contain competitively sensitive, confidential contractual terms and negotiations.

I. Legal Standard

A party may overcome the common law right of public access to judicial documents by making “a particular and specific demonstration of fact showing that disclosure would result in an injury sufficiently serious to warrant protection.” *SEC v. Ripple Labs, Inc.*, No. 20-cv-10832 (AT), 2023 WL 3477552, at *2 (S.D.N.Y. May 16, 2023) (cleaned up). Redactions to judicial documents that contain confidential information are warranted where the disclosure of the information may leave a party at a “significant competitive disadvantage” or cause them “financial harm.” *Standard Inv. Chartered, Inc. v. Fin. Indus. Regul. Auth., Ind.*, 347 F. App’x 615, 617 (2d Cir. 2009) (cleaned up). Applying this standard, courts routinely recognize the confidentiality of competitively sensitive contractual terms and negotiations. See, e.g., *id.* (affirming redaction of “financial data” due to potential harm of disclosure); *CT Espresso LLC v. Lavazza Premium Coffees Corp.*, No. 1:22-CV-377-VSB, 2022 WL 443644, at *2 (S.D.N.Y. Feb. 14, 2022) (granting motion to seal “portions of contracts regarding proprietary commercial information”).

II. Discussion

Sirius XM seeks to seal limited portions of the Response that detail specific terms of license agreements to which Sirius XM is a party and which contain confidentiality provisions, as well as details of confidential negotiations. Redaction of this information, which includes payment structures and rates

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and other competitively-sensitive commercial terms, is warranted because its public disclosure would be “detrimental to [Sirius XM’s] competitive standing and business relationships.” *Ripple Labs*, 2023 WL 3477552, at *5; *see also Standard Inv. Chartered*, 347 F. App’x at 617 (upholding sealing because “outsider with knowledge of the final terms of the [agreement] could . . . use that information to deduce [defendant’s] negotiation tactics”); *Red Hawk, LLC v. Colorforms Brand LLC*, 638 F. Supp. 3d 375, 385 (S.D.N.Y. 2022) (granting request to redact rates and terms because the parties’ privacy interests were “substantial” and “weighed against the presumption of access”).

Here, existing and prospective counterparties could unfairly leverage the confidential contract terms and details regarding Sirius XM’s commercial agreements to undermine Sirius XM’s ability to negotiate with parties in the future. Because disclosure of this information would put Sirius XM at a “significant competitive disadvantage,” *Standard Inv. Chartered, Inc.*, 347 F. App’x at 617, Sirius XM asks the Court to permit Sirius XM to redact the narrowly-tailored portions of the Response that contain competitively sensitive contractual and negotiation information.

III. Conclusion

Because this targeted redaction request is narrowly tailored to protect non-public, sensitive business and contractual information, which would cause severe harm to Sirius XM if disclosed, Sirius XM respectfully requests that the Court grant its Letter Motion in full. Sirius XM is providing a copy of the unreacted version of the Response to BMI’s outside counsel pursuant to an understanding that they will treat it as “outside counsel eyes only.”

Sincerely,

/s/ Benjamin E. Marks

Benjamin E. Marks

cc: All counsel of record (via ECF)

Application GRANTED. The Clerk of Court is directed to maintain docket entry 29 under seal, viewable to the Court and the parties only.

The Clerk of Court is further directed to terminate the pending motion at docket entry 28.

Dated: December 16, 2024
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE